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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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)

Policies and Rules Concerning)
Toll Fraud)
)

CC Docket No. 93-292

COMMENTS OF THE
INTERNATIONAL COMMUNICATIONS ASSOCIATION

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January 14, 1994

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I. INTRODUCTION

The International Communications Association (ICA) hereby submits its initial comments in response to the Notice of Proposed Rulemaking (the "Notice"), released December 2, 1993, (FCC 93-496). The Notice establishes a broad-ranging investigation of fraudulent practices that utilize telecommunications equipment and services. ICA participated in the Commission's October 9, 1992, en banc meeting on telecommunications fraud, and wholeheartedly supports the initiatives discussed in the current Notice.

Although our initial comments will focus primarily upon PBX fraud, we will also consider the other types of fraud discussed in the Notice, and address them as well. ICA recommends that the Commission:

- (1) Create a Federal Advisory Committee for at least two years to enhance private sector efforts to combat telecommunications fraud;
- (2) Adopt the proposed amendment to Part 68 of its Rules, which should apply to all users of equipment that can be identified by CPE manufacturers, distributors and after-market service organizations; and

- (3) Require carriers to change current tariff provisions containing absolute limitations on carrier liability so that the risks and responsibilities of users, equipment vendors and carriers are defined in detail and fraud-related disputes can be submitted to arbitration.

II. ICA'S INTERESTS

ICA is the largest association of telecommunications users in the United States. Recent estimates indicate that ICA members spend approximately \$21-billion per year on telecommunications services and equipment. The bylaws of the ICA exclude any firm that is predominantly engaged in the production, sale or rental of communications services or equipment from eligibility for membership. ICA members are large users of each and every type of existing or potential service offered by carriers subject to the Commission's rules and regulations. Telecommunications fraud, particularly fraud involving misuse of PBXs, and other equipment, is a major concern of ICA and its members. In a survey taken for the en banc meeting noted above, ICA members identified over 550 incidents of telecommunications fraud involving PBX and voice mail equipment, credit cards, cellular telephones and other devices. About 70% of these incidents occurred through customer premises equipment. The average loss incurred by ICA members was approximately \$130,000 per incident.

III. BACKGROUND

ICA's approach to telecommunications fraud has emphasized several of the themes identified in the Notice: Commission policy should protect users who have taken reasonable actions to

deal with fraud problems that are within their control. Vendors of all types have the obligation to inform their customers of any conditions that might create potential for toll fraud. Customers, in turn, must communicate effectively with their suppliers. A vendor's obligation to provide and to act on information concerning toll fraud and its prevention should not be viewed as an opportunity to impose extra charges on users who must have the information.

ICA has emphasized that effective new methods for detecting and controlling telecommunications fraud can be devised by users, equipment manufacturers and carriers working together (if the Commission creates the correct incentives), and thus should not require extensive new FCC or other governmental resources. ICA believes that the publicity generated from the en banc meeting and other Commission proceedings, as well as the introduction of H.R. 6066 in the last Congress, has had a positive effect on the toll fraud dilemma. Because of the visibility of the problem, users, equipment providers and carriers have begun to work more closely on preventive education and quicker recognition of incidents of fraud. However, the incentives that would provide even more effective checks on telecommunications fraud are not fully in place. The current system still exhibits a fundamental flaw which permits the arbitrary assignment of risk of loss by carriers to users even, when the latter have taken reasonable precautions.

Moreover, carriers are still resisting the requests of users and others to file tariffs offering the capability to block international calls on customer-specified customer premises equipment lines. ICA strenuously believes that the Commission should move immediately to require federally tariffed call blocking services to be tariffed (regardless of other steps it may take in this proceeding) by issuing an order in CC Docket No. 91-35. An Order in that proceeding is long overdue and would help to demonstrate the Commission's intent to show leadership so that LECs will take meaningful action.

IV. PROCEDURES FOR DEALING WITH FRAUD

The Commission recognizes that combating telecommunications fraud involves overall telecommunications industry processes as well as remedies for specific types of fraud. In Paragraph 13 of the Notice the Commission requests comments on ways to enhance existing or potential industry coordination procedures which includes the formation of a new Federal Advisory Committee on telecommunications fraud to recommend specific solutions, FCC support for law enforcement efforts encouraging Congress to consider legislation, and broader educational initiatives for consumers.

ICA believes that at a minimum, the FCC should continue to encourage carriers to exchange information about toll fraud and stimulate CPE manufacturers to cooperate on software and equipment concepts and techniques to prevent fraud. The

procedures for detecting new types of fraud, notifying the public and exploring possible remedies must be flexible. New forms of toll fraud are continuously evolving.^{1/} Until such time as private sector processes have shown themselves to be effective, ICA believes that the Commission should establish a new Federal Advisory Committee. An Advisory Committee on Telecommunications Fraud would exercise FCC leadership and representation in this area, and thus "prime the pump" for longer-range private sector efforts. The Advisory Committee should include major carriers, equipment manufacturers and user groups. It should be chartered to report semi-annually regarding its accomplishments. Ideally, the Committee should be terminated, after no less than two years, through an automatic sunset provision or when the Committee can demonstrate that it is no longer needed.

The Notice properly observes that the Commission is not a prosecutorial body [para. 6]; however, an advisory committee would permit the Commission to utilize and further develop the expertise it possesses to aid Congress in devising new statutory

^{1/} Currently, ICA members have discovered 800 numbers (e.g., for phone sex services) that allow the caller to create his own Personal Identification Number (PIN) which is associated with the ANI received through the 800 service. Future calls to the 800 number that use the PIN are billed back to the original ANI number that was used in establishing the "account." If the initial call that established the PIN was originated through a business user's PBX or Centrex system, subsequent calls using that PIN will be billed to the main PBX or Centrex number. The technology being employed does not allow a PIN to be established from a pay phone. Legislation recently enacted to control telemarketing abuse and fraud may not cover this type of activity; efforts to educate consumers and businesses about such practices may be the best prophylactic available.

controls on toll fraud. By working in tandem with other authorities, the Commission's technical expertise should be helpful in ensuring that toll fraud is treated as a serious crime warranting prosecution of offenders with appropriate financial and prison penalties--consistent with the privacy and security needs of legitimate telecommunications users.

One by-product of the increased visibility now afforded telecommunications fraud is that efforts at education have been increased; however, more education is needed. Users and user organizations should be encouraged to develop educational materials (such as those noted in ICA's presentation at the en banc hearing) and to obtain and use materials already available from carriers and CPE manufacturers and other sources. Interexchange carriers, for example, have videos about toll fraud that should be publicized more. Commission Public Notices and compilations of such materials would help spread information about the availability of these materials. Vendors should be encouraged, if not mandated, to use billing inserts to alert residential customers to telephone credit card fraud and how to protect against it.

V. SPECIFIC REQUIREMENTS FOR FCC-REGISTERED EQUIPMENT

ICA generally supports the addition of proposed subsection (1) to section 68.200 of the Commission's Rules. [Notice, Appendix E, and para. 40]. The obligation to include warnings and new instructions contemplated by the rule should extend to

any user of PBX or other complex CPE that is known to the manufacturer, distributor or other equipment vendor. However, it may be impractical to require that warnings be placed on older equipment where the vendor is unable to trace it to present owners. Rather than revoke registration of old equipment, which may cause a different type of financial hardship for users, its continued use should be permitted at the owner's risk.

Others in the manufacturing and distribution chain, such as an after-market PBX service organization, should be required to warn their customers of the risks of fraud when the manufacturer of the equipment has been able to supply the organization with the appropriate warnings and/or instructions.

ICA does not believe that the Commission should prescribe specific language for the warnings or instructions that manufacturers will provide for equipment. However, the wording of warnings on equipment should indicate clearly that certain features are potential avenues for fraud if various, enumerated protective measures are not utilized, and that failure of the customer to use the equipment in the prescribed manner, including all fraud prevention features, may result in the assumption of all responsibility for resulting fraud loss.

The proposed rule does not directly apply to providers of network services. However, as ICA discusses below, service providers should also convey appropriate warnings of the possibility of fraud--for example, using inbound access to outbound trunks. Carriers' incentives to extend these relatively

low cost measures to more users and to new examples of telecommunications fraud will flow from the Commission's changing the current one-sided distribution of risks found in carrier tariffs.

VI. ALLOCATION OF RISKS

While ICA supports new fraud prevention measures, such as the procedures and equipment-related notifications, a major issue in this proceeding remains: How the overall risks of telecommunications fraud should be allocated when it occurs? The Notice contains a thorough discussion of the issues associated with telecommunications fraud committed via PBX and other complex business equipment, and requests comment about a variety of issues in paragraphs 25 and 26 regarding allocations of liability when losses do occur, as well as the relationship between prevention efforts (or lack thereof) and liability for fraud-related losses.

Risk allocation options ranging from one extreme to the other from a range of possibilities are not likely to be workable. At one extreme is the current situation in which regulated carriers insulate themselves very broadly from fraud liability. The tariff provisions in question are artifacts of a former era and no longer reflect the complexities of a multi-vendor, multi-technology environment in which telecommunications and information services play increasingly vital economic roles. Such adhesion terms would not exist in a normal,

competitive commercial relationship. At the other extreme would be a regime where tariff provisions were no longer deemed to be reasonable practices. In effect, the marketplace would determine allocations of fraud liability. Where most other terms and conditions of service were still established by tariffs, however, elimination of all liability rules in the tariffs would be a radical step with unforeseeable consequences.

Accordingly, ICA believes that the Commission should require all carriers subject to its jurisdiction to tariff generally similar regulations governing the respective roles of customers, equipment manufacturers and the carriers themselves when equipment-related telecommunications fraud has occurred. [See Notice, para. 25].^{2/} The tariff changes should incorporate certain factors for consideration in determining fraud liability, such as:

- o The reasonableness of equipment providers' software and hardware techniques for preventing fraud or alerting users to likely fraud, and whether the customer was fully informed as to the use of the protective alternatives made available by the CPE provider. Compliance with the proposed amendment to Section 68.200(1) of the Commission's Rules should establish the basic tests of reasonableness, as ICA discussed above.
- o Whether the customer made reasonable efforts to implement the equipment provider's warnings and instructions, and made reasonable efforts to educate his employees about being alert to and preventing fraud, as well as responding to evidence of potential

^{2/} In response to another inquiry in paragraph 25, ICA believes that residential customers should not be required to pay for business toll fraud but should be responsible for fraudulent use of their own calling cards to the extent the law provides.

fraud brought to his attention by internal sources or by others including carriers. The Notice discusses some examples of reasonable efforts in its discussion of the United Artists payphone case [para. 9]; analogous examples pertain to fraud prevention efforts for equipment other than payphones as well.

- o Whether the carrier whose network services were used to commit the fraud had reasonable procedures in place to identify potential fraud and alert customers. It is especially important in this context that a carrier's reasonable procedures must include whether the carrier offered and customer took advantage of international call blocking services.

The revised tariffs concerning liability for fraud should incorporate private dispute resolution practices so as to minimize the burden on Commission resources and importantly, reduce the period of time before disputed questions of liability are resolved. In accord with Commission requests for comments in paragraphs 25 and 26 of the Notice, ICA believes that the revised tariffs on liability for fraud should provide customers the option of requesting arbitration of billing disputes involving fraud, using established institutions such as the American Arbitration Association or other organizations. Arbitrators should employ comparative negligence concepts to resolve disputes, and arbitration costs should be shared on the same comparative negligence principles, i.e., borne according to the ultimate assignment of liability -- loser(s) pay(s). Adoption of comparative negligence principles for dealing with billing disputes will serve to motivate all parties to improve fraud control.

Removal of the tariff limitations of liability for carriers will act as a motivator for the carriers to adopt improved fraud control measures, as the Notice suggests in paragraph 26. When customers initiate service, carriers should provide written warnings as to possible risks of using the services. Large new customers, e.g., with anticipated carrier billings in excess of \$50,000 annually, should be required to make an affirmative written statement that they understand the risks. Concurrently, carriers should provide recommendations to users as to reasonable steps to be taken to prevent or minimize fraud and users should be responsible for their implementation, or assume the risks of not adopting them.

Affirmative telecommunications fraud defense mechanisms by carriers should be required in certain instances and encouraged in others. ICA is mindful that the development of such mechanisms could be costly or impractical for smaller local and long distance carriers. While market pressures will likely will lead most carriers to develop fraud control software and other mechanisms if the largest carriers are required to do so, ICA would not object to size-based limits on the Commission's mandate that carriers must incorporate traffic monitoring into their interexchange services for obvious indications of fraud, i.e., deviations from a typical user's calling patterns, such as heavy traffic outside normal business hours.

Similarly, market forces are likely to lead to more offerings by carriers of enhanced traffic monitoring and analysis programs and insurance schemes (such as the AT&T NetProtect, SprintGuard, etc. options identified in the Notice) for less obvious indications of fraud, e.g., deviations from the specific customer's normal calling patterns, such as unusual increases in traffic. ICA does not believe that such optional services should be required, as such, but where offered they should be based upon the carrier's incurred costs plus a reasonable level of profit. A carrier's failure to offer such optional services, and to do so at cost-based rates and charges, should be a factor that is weighed into that carrier's telecommunications fraud liability in particular circumstances, in order to provide a market-like incentive to expand and enhance such options. The combination of ICA's proposed shift in potential liability for fraud and re-definition of the roles of vendors and customers should also encourage further development of other optional fraud insurance offerings with, and without deductibles, as discussed in paragraph 26.

As noted above, current market forces do not appear to offer adequate incentives for carriers to unilaterally tariff international call blocking options, despite the fact that many ICA members have requested these capabilities. Clearly, the option of blocking international calls by country code and other unauthorized calls by area code will help control fraud. Therefore, the FCC should require carriers to file tariffs

offering the capability to block international calls on customer-specified CPE lines. Likewise, in the future, equipment suppliers should include automatic route selection (ARS) software as part of the base price of PBXs and customers should be encouraged to use it to restrict calls to those areas--such as other countries--to which the user has no internal traffic, or otherwise be liable for any resulting fraud.

VII. CONCLUSION

Telecommunications fraud is a complex problem for which no single solution will likely ever be satisfactory. Further development of software-based telecommunications and information services seem destined to continue to incite new methods of fraudulent and unlawful behavior. The Commission cannot prevent telecommunications fraud, and its efforts to control it will only be successful to the extent the private sector, including all segments of the telecommunications industry, are offered appropriate incentives to extend their own efforts to combat fraud. In these comments, ICA has attempted to outline a financially and administratively responsible middle ground that accommodates the interests of all interested parties.


WHEREFORE, the International Communications Association respectfully requests that the Commission adopt guidelines and rules governing general procedures, CPE warnings and instructions and risk allocation procedures consistent with the Notice and ICA's comments herein. ICA also requests that the Commission act

swiftly in CC Docket No. 91-35, to require LECs to provide discrete federally tariffed call blocking services.

Respectfully Submitted,

INTERNATIONAL COMMUNICATIONS ASSOCIATION

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CERTIFICATE OF SERVICE

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